

REPUBLIC OF KENYA



PAPERS LAID	
DATE	19/05/2020
TABLED BY	Sen. Abshiro on behalf of Chairperson
COMMITTEE	Ad Hoc on COVID-19
CLERK AT THE TABLE	Lillian.

TWELFTH PARLIAMENT (FOURTH SESSION)

THE SENATE

AD HOC COMMITTEE ON THE COVID-19 SITUATION IN KENYA

6TH PROGRESS REPORT

Thematic Area 3: Social, Public Order and Human Rights

Clerk's Chambers,
First Floor,
Parliament Buildings,
NAIROBI.

19TH MAY, 2020

PREFACE

Mr. Speaker,

The Ad Hoc Committee on the COVID-19 Situation was established by the Senate on Tuesday, 31st March, 2020, with the mandate to oversight actions and measures taken by the national and county governments in addressing the spread and effects of COVID-19 in Kenya.

The Committee is mandated to address the following, among other matters-

- (a) provision of testing and medical equipment, including adequate ventilators in referral hospitals and in at least one public hospital in each county;
- (b) provision of adequate isolation centres and Intensive Care Unit (ICU) facilities in each county;
- (c) measures to ensure continuous supply of food and other essential commodities at affordable prices;
- (d) measures to enable learners in educational institutions to continue with their studies;
- (e) measures to ensure protection, safety and well-being of healthcare and other frontline workers;
- (f) enhancement of capacity and flexible deployment of healthcare staff;
- (g) financial assistance to vulnerable persons and groups;
- (h) protection of residential and commercial tenants;
- (i) establishment of a stimulus package for the Micro, Small and Medium sized Enterprises;
- (j) easing of legislative and regulatory requirements for doing business;
- (k) measures to protect employees from retrenchment and job losses; and
- (l) uniform policies and procedures aimed at slowing and eventually stopping the spread of the virus.

The Committee is comprised of the following members: -

- | | |
|--|--------------------|
| 1) Sen. Johnson Sakaja, CBS, MP | - Chairperson |
| 2) Sen. (Arch.) Sylvia Mueni Kasanga, MP | - Vice Chairperson |
| 3) Sen. (Dr.) Michael Maling'a Mbiti, MP | - Member |
| 4) Sen. Abshiro Soka Halake, MP | - Member |
| 5) Sen. Mithika Linturi, MP | - Member |
| 6) Sen. Erick Okong'o Mogeni, SC, MP | - Member |
| 7) Sen. Mwinyihaji Mohamed Faki, MP | - Member |

Mr. Speaker,

The Ad Hoc Committee on the COVID-19 Situation has, to date, held a total of **53 Sittings**. Save for the first sitting of the Committee which was held in the Senate Chamber, the other 52 sittings, including with stakeholders, have been held virtually.

As noted in the previous Progress Reports of the Committee, during the initial stages of its work, the Committee clustered all emerging issues arising from the COVID 19 outbreak situation in Kenya into five thematic areas, as provided below:

- a) *Health Issues* – including community health, testing, quarantine, isolation centres, ICU facilities, human resources for health, drugs and supplies, role and engagement of county governments, and mental health;
- b) *Economic and Finance Issues* – including macro-economic effects, impact on businesses, trade facilitation, and measures to cushion borrowers and financial institutions;
- c) *Social, Public Order and Human Rights* – including protection for vulnerable persons and groups, protection of women and girls at risk of domestic abuse, measures to enable learners to continue with their studies, enforcement of the nationwide curfew, access to justice, and decongestion of prisons and remand facilities;
- d) *Access to Food, Water and other Basic Commodities* – including measures to ensure the continuous production and supply of food, water and other essential commodities; and
- e) *Support Services and Cross-Cutting Issues* – including awareness creation on measures to prevent infection and combat stigmatization, and the role of ICT in combating the COVID-19 pandemic.

Having already reviewed best practice from comparative jurisdictions and analyzed key issues and concerns arising from the five thematic areas, the Committee resolved to focus on one thematic area at a time, for purposes of facilitating a more in-depth analysis of the issues arising thereon. The 3rd Progress Report of the Committee, tabled on 28th April, 2020, covered thematic area 1, namely Health Issues while the 5th Progress Report of the Committee, tabled on 12th May, 2020 covered thematic area 2, namely, Economic and Finance Issues.

The focus of this 6th Progress Report of the Committee is on the third thematic area, namely, Social, Public Order and Human Rights Issues.

Subsequent progress reports will focus on the remaining thematic areas as captured above.

Mr. Speaker,

In relation to the thematic area of Social, Public Order and Human Rights Issues, the Committee deliberated extensively on issues relating to: -

- a) Social-Economic protection of vulnerable groups including persons living with disability, persons employed in the informal sector, and persons living in informal settlements
- b) Violation of human rights
- c) Protection of Employers and Employees
- d) Engagement of learners during the closure of all learning institutions
- e) Operations of the Judiciary
- f) Management of prisons and refugee camps
- g) Kenyans in the diaspora

Mr. Speaker,

Having analyzed the issues and concerns raised by the public under thematic area 3, the Committee met and deliberated on the matters with the following stakeholders: -

I. Government Ministries, Departments and Agencies

- a) Ministry of Labour and Social Protection
- b) Ministry of Interior and Coordination of National Government
- c) Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
- d) Ministry of Foreign Affairs
- e) National Transport and Safety Authority (NTSA)

II. Law, Public Order and Human Rights Sector

- a) National Council for the Administration of Justice (NCAJ)
- b) Law Society of Kenya (LSK)

- c) Amnesty International Kenya
- d) Kenya Legal and Ethical Issues Network (KELIN)
- e) Economic and Social Rights Centre (Haki Jamii)
- f) Crime si Poa
- g) Adequate Housing

III. Labour Sector

- a) Federation of Kenya Employers (FKE)
- b) Central Organization of Trade Unions (COTU)

IV. Transport Sector

- a) Kenya Transporters Association (KTA)
- b) Matatu Owners Association (MOA)
- c) East Africa Tour Guides and Drivers Association (EATDGA)
- d) Transport Workers Association (TWA)
- e) Digital Transport Forum (DTF)
- f) SWVL Kenya

V. Education Sector

- a) Kenya Secondary School Heads Association (KESSHA)
- b) Kenya Primary Schools Heads Association (KEPSHA)
- c) Kenya Union of Post Primary Education Teachers (KUPPET)
- d) Kenya National Union of Teachers (KNUT)
- e) Universities Academic Staff Union (UASU)
- f) National Parents Association (NPA)
- g) Kenya Private Schools Association (KPSA)

Mr. Speaker,

Based on its analysis of the written memoranda received from members of the public, and on the submissions made by the key stakeholders in the Social, Public Order and Human Rights area, the Ad Hoc Committee on the COVID-19 Situation is pleased to table before this House its 6th Progress Report with substantive observations and recommendations for adoption by the House.

The COVID pandemic situation is still evolving. As such, the observations and recommendations contained in this report reflect the situational context, and

information that was available to the Committee at the time of the writing of this report. Accordingly, some of the Committee's observations and recommendations on the third thematic area may be reviewed as the Committee continues with its consideration of the matter.

Mr. Speaker,

For the current situation however, in relation to the thematic area of Social, Public Order and Human Rights Issues, the Committee **observes** that-

- a) The pandemic has adversely affected key sectors of the economy such as trade, tourism, agriculture, and manufacturing, leading to massive revenue losses and therefore consequent job losses
- b) The curfew and other restrictions imposed to control the spread of COVID-19 had affected persons living in informal settlements and those working in informal sectors, the government has rolled-out cash transfer assistance programs to enable the urban poor cater for their basic needs. The Street Families Rehabilitation Fund is also currently being used to support institutions in only fourteen counties yet there are street families in all counties.
- c) The Judiciary's up-scaling of services has been extremely slow. The Judiciary had not yet up scaled its services to keep the wheels of justice turning. The Ministry of Health was to complete an inspection of courts by 24th April, 2020 to determine the magnitude of up-scaling. The upscaling is however yet to be done as expected.
- d) Persons engaged in the public transportation industry had been experiencing challenges due to lack of renewal of various licenses, due suspension of service by the NTSA. Taxi operators on the digital platform had been locked out by some App operators for lack of necessary documentation. It is however noted that after the Committee brought this matter to the attention of NTSA during a meeting with the committee on 30th April, 2020, NTSA on the same day published a notice on their website extending the expiry of motor vehicle inspections from 16th March, 2020 to 30th May, 2020

- e) The transportation of goods across borders by truck drivers is a logistical nightmare. Truck drivers have to persevere with traffic jams of over 40kms at some border posts due to the testing procedures. The issue of relay-driving of the trucks at the various borders had also posed a security threat especially with regard to the goods being transported.
- f) Police brutality and use of excessive force while handling violators or alleged violators of the various regulations put in place to suppress COVID 19 is inhuman and unacceptable.
- g) Evictions being carried out during this COVID 19 season whether notices had been issued or not are inhuman and uncalled for. The Committee also notes that the President had directed that no evictions should be carried out during this pandemic period.
- h) Access to information is a right of every citizen under Article 35 of the Constitution. It is regrettable that some public institutions have ignored requests from non- governmental institutions pertaining to various issues related to COVID 19.
- i) There are Kenyan citizens in the diaspora who have been adversely affected by the effects of COVID 19 and would like to come back home. However, these citizens cannot afford to pay for their air-tickets back home and need to be assisted to get home as their continuous stay in the diaspora is unsustainable.
- j) The Ministry of Education had as at 8th May, 2020 not engaged with the stakeholders in the Education sector to assess the effects of COVID 19 and give guidelines on home-based interaction between the children, parents, and teachers. However, on 12th May, 2020 after the Committee had met with the education stakeholders and expressed its displeasure in the lack of social dialogue, the Cabinet Secretary, Ministry of Education launched the COVID 19 National Education Response Committee to among other functions, advise the Cabinet Secretary on the impact of COVID 19 on education. The Committee draws its membership from various stakeholders in the Education Industry and has made a call for submission of

memoranda from the public on matters relating to their terms of reference, to be received on or before 22nd May, 2020.

- k) Learners from low –income households, pastoralist communities and far flanked regions do not have access to internet, electricity, relevant gadgets and the necessary infrastructure to facilitate remote learning and as such cannot fully participate in the various on-going remote programs.
- l) The programs currently being aired by the Kenya Institute of Curriculum Development do not incorporate suitable content for learners with disabilities, especially the blind and deaf. The practical subjects are also not covered, and the programs do not serve the main objective of the Competency Based Curriculum. The learning is therefore not on-going, and the syllabus is not being covered. Teachers will have to pick-up from where they left when schools re-open.
- m) Early marriages have increased due to the abrupt closure of learning institutions and uncertainty as to when the institutions will re-open.
- n) Incidents of gender-based violence have increased since the commencement of enforcement of measures to contain the spread of COVID 19.
- o) Approximately 350,000 persons especially the older persons eligible to benefit from the *Inua Jamii* Program were not benefiting from the program due to lack of prompt updating of the register.
- p) The mode of transmission of money to the older persons registered under the *Inua Jamii* program requires physical presence which may expose the older persons to infectious diseases due to their vulnerability, especially during this pandemic season.

Mr. Speaker,

Based on these observations, the Ad Hoc Committee on COVID-19 makes the following **recommendations**-

- a) The National Treasury sets up a multi-agency team to spearhead the establishment of a Wage Relief Fund in the financial year 2021/2022

- b) The Ministry of Labour and Social Protection in liaison with the Federation of Kenya Employers and the Central Organization of Trade Unions should reach out to employers and employees to ensure that where revenue losses have been realized, employers and employees may jointly review the terms of the employment contract, in writing, to suit the prevailing circumstances of business. Where parties choose to review the employment contract and employees are unionized, the trade union shall be informed and involved in the review to find an amicable solution. However, where employees are not unionized, the employer shall directly inform the employee of the need to review the employment contract and shall discuss the terms to be reviewed and the extent of review.
- c) The Ministry of Labour and Social Assistance should engage institution in the remaining 33 counties to ensure that street families through-out the country benefit from the Street Families Rehabilitation Fund
- d) the Judicial Service Commission immediately up-scales the judicial services in liaison with the Ministry of ICT to increase their use of ICT especially in terms of E-Filing and virtual Courts and report status of implementation to the Senate on or before 29th May, 2020;
- e) the Judicial Service Commission explores ways in which Alternative Dispute Resolution mechanisms can also be embraced virtually to decongest the courts
- f) the National Transport and Safety Authority should intervene to ensure that during the period of restriction of movement in and out of various counties, the matatus affected by the restrictions can ply alternative routes to avoid redundancy
- g) the National Transport Authority should extend the validity of manual licenses for an additional one year since the application for digital licenses requires physical appearance for purposes of biometrics, which is currently restricted due the measures put in place.

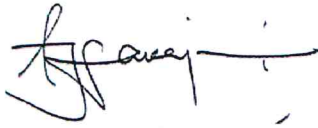
- h) the Independent Police Oversight Authority should move with speed to ensure police officers found to have used excessive force on citizens while enforcing various measures are prosecuted. The Authority should submit a status report to the Senate by 15th June, 2020, indicating the police officers who have been prosecuted and the actions taken against them
- i) the Ministry of Foreign Affairs should set a criterion on eligibility of Kenyans in the diaspora who are in dire need of coming back home but cannot afford air-tickets, giving priority to students. The Ministry should then make a request for support from the various emergency funds that have been set-up to mitigate the effects of COVID 19, to ensure that those Kenyans are facilitated to come back home. The Ministry should submit a detailed report to the Senate by 19th June, 2020 indicating the criteria set to identify the Kenyans in the diaspora eligible for support and measures taken by the Ministry to mobilize resources to facilitate these Kenyans.
- j) the Ministry of Education should enhance digital literacy for teaching and learning regardless of COVID 19. The Kenya Institute of Curriculum Development should fast-track the development of the digital content syllabus.
- k) the Ministry of Education should fast-track the setting-up of a clear roadmap prior to re-opening of learning institutions.
- l) the Ministry of Labour and Social Protection immediately rolls out a plan to update its register and incorporate the over 350,000 eligible beneficiaries to the cash transfer *Inua Jamii* Program.
- m) the Ministry of Labour and Social Protection, in liaison with the Ministry of Interior and National Coordination carries out capacity building of older persons with an aim of remitting the funds via mobile platforms

Mr. Speaker,

As I conclude, the Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in undertaking this important assignment.

Further, the Committee wishes to thank the members of the public who sent their submissions to the Committee, as well as the stakeholders who have appeared before and engaged with the Committee.

I thank you, Mr. Speaker.



19th May, 2020

Signed.....

Date.....

**SEN. JOHNSON SAKAJA, CBS, MP,
CHAIRPERSON,
SENATE AD HOC COMMITTEE ON COVID-19**

ADOPTION OF THE 6TH PROGRESS REPORT OF THE SENATE AD HOC COMMITTEE ON THE COVID-19 SITUATION IN KENYA

We, the undersigned Members of the Senate Ad Hoc Committee on the COVID-19 Situation in Kenya, do hereby append our signatures to adopt the 6th Progress Report-

Sen. Johnson Sakaja, CBS, MP	-Chairperson	
Sen. (Arch.) Sylvia Kasanga, MP	-Vice-Chairperson	
Sen. (Dr.) Michael Mbiti, MP	-Member	
Sen. Abshiro Soka Halake, MP	-Member	
Sen. Mithika Linturi, MP	-Member	
Sen. Erick Okong'o Mogeni, SC, MP	-Member	
Sen. Mwinyihaji Mohamed Faki, MP	-Member	

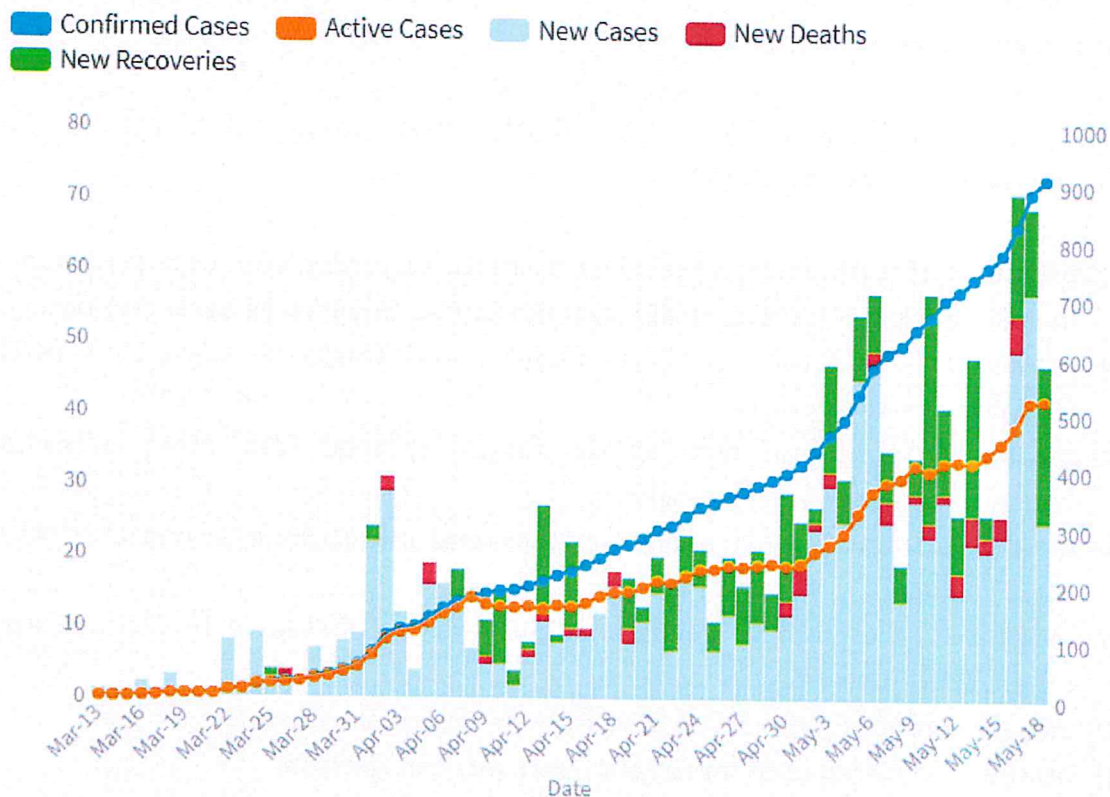
CHAPTER ONE: INTRODUCTION

Background to the COVID-19

Corona Virus Disease 2019 (COVID-19) is a new respiratory illness that began in Wuhan, China, in December 2019. As at **18th May, 2020**, the virus had resulted in more than **4.81 million** infections. Of these, **1.79 million** patients had fully recovered, while **319,000** patients had succumbed to the illness.

In Kenya, a total of **44,851 tests** had been conducted, with **912** testing positive by the said date. Of this number, **336** patients had fully recovered, while **50** patients had succumbed.

The chart below shows the trend in new infections and recoveries in Kenya, since the first COVID-19 case was reported on 13th March, 2020¹: -



Source: [Ministry of Health](#) • Created by Oliver Mathenge

¹ <https://www.the-star.co.ke>

The COVID-19, which has since been declared a global health pandemic by the World Health Organization (WHO), can easily be spread from person to person, through contact with droplets produced by a person who is sneezing or coughing or contaminated surfaces or objects. COVID-19 causes severe symptoms like fever, cough, headache, body aches and difficulty in breathing.

Establishment, mandate and membership of the Ad Hoc Committee

During the sitting of the Senate held on Tuesday, 31st March, 2020, the Senate, by Resolution, established the Ad Hoc Committee on the COVID-19 situation, with the mandate to oversight actions and measures taken by the national and county governments in addressing the spread and effects of COVID-19 in Kenya. This action was taken in recognition of the need for an integrated and multi-sectorial intervention towards a harmonized comprehensive response to the pandemic, and of the need to complement the efforts of the national and county governments in containing the spread of the pandemic and cushioning Kenyans from the shocks arising thereon.

The Ad Hoc Committee on the COVID-19 Situation is mandated to address the following, among other matters-

- (a) provision of testing and medical equipment, including adequate ventilators in referral hospitals and in at least one public hospital in each county;
- (b) provision of adequate isolation centres and Intensive Care Unit (ICU) facilities in each county;
- (c) measures to ensure continuous supply of food and other essential commodities at affordable prices;
- (d) measures to enable learners in educational institutions to continue with their studies;
- (e) measures to ensure protection, safety and well-being of healthcare and other frontline workers;
- (f) enhancement of capacity and flexible deployment of healthcare staff;
- (g) financial assistance to vulnerable persons and groups;
- (h) protection of residential and commercial tenants;
- (i) establishment of a stimulus package for the Micro, Small and Medium sized Enterprises;

- (j) easing of legislative and regulatory requirements for doing business;
- (k) measures to protect employees from retrenchment and job losses; and
- (l) uniform policies and procedures aimed at slowing and eventually stopping the spread of the virus.

The Committee is comprised of the following members:-

- 1) Sen. Johnson Sakaja, CBS, MP - Chairperson
- 2) Sen. (Arch.) Sylvia Mueni Kasanga, MP - Vice Chairperson
- 3) Sen. (Dr.) Michael Maling'a Mbiti, MP - Member
- 4) Sen. Abshiro Soka Halake, MP - Member
- 5) Sen. Mithika Linturi, MP - Member
- 6) Sen. Erick Okong'o Mogeni, SC, MP - Member
- 7) Sen. Mwinyihaji Mohamed Faki, MP - Member

At the time of adopting the 6th Progress Report, the Committee had held a total of **54 sittings**. The Minutes of the 54th Sitting are attached to this Report as **Annex 1**.

CHAPTER TWO

SOCIAL, PUBLIC ORDER AND HUMAN RIGHTS

As noted in the previous reports, during the initial stages of its work, the Committee clustered all emerging issues arising from the COVID 19 outbreak situation in Kenya into five thematic areas, as provided below:

- a) *Health Issues* – including community health, testing, quarantine, isolation centres, ICU facilities, human resources for health, drugs and supplies, role and engagement of county governments, and mental health;
- b) *Economic and Finance Issues* – including macro-economic effects, impact on businesses, trade facilitation, and measures to cushion borrowers and financial institutions;
- c) *Social, Public Order and Human Rights* – including protection for vulnerable persons and groups, protection of women and girls at risk of domestic abuse, measures to enable learners to continue with their studies, enforcement of the nationwide curfew, access to justice, and decongestion of prisons and remand facilities;
- d) *Access to Food, Water and other Basic Commodities* – including measures to ensure the continuous production and supply of food, water and other essential commodities; and
- e) *Support Services and Cross-Cutting Issues* – including awareness creation on measures to prevent infection and combat stigmatization, and the role of ICT in combating the COVID-19 pandemic.

Further, as noted in the Committee's earlier Reports, pursuant to Article 118 of the Constitution and the Senate Standing Orders on public participation, the Committee invited stakeholders and members of the public to submit written memoranda arising from, or related to the COVID-19 pandemic under any of the aforementioned thematic areas. As of 21st April 2020, the Committee had received a total of **156 submissions**.

Consequently, having identified and analyzed the various issues and concerns raised by key stakeholders under the third thematic area on Social, Public Order

and Human Rights, the Committee, as at 18th May, 2020 had met with key stakeholders as indicated below-

I. Government Ministries, Departments and Agencies

- a) Ministry of Labour and Social Protection
- b) Ministry of Interior and Coordination of National Government
- c) Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
- d) Ministry of Foreign Affairs
- e) National Transport and Safety Authority (NTSA)

II. Law, Public Order and Human Rights Sector

- a) National Council for the Administration of Justice (NCAJ)
- b) Law Society of Kenya (LSK)
- c) Amnesty International Kenya
- d) Kenya Legal and Ethical Issues Network (KELIN)
- e) Economic and Social Rights Centre (*Haki Jamii*)
- f) *Crime si Poa*
- g) Adequate Housing

III. Labour Sector

- a) Federation of Kenya Employers (FKE)
- b) Central Organization of Trade Unions (COTU)

IV. Transport Sector

- a) Kenya Transporters Association (KTA)
- b) Matatu Owners Association (MOA)
- c) East Africa Tour Guides and Drivers Association (EATDGA)
- d) Transport Workers Association (TWA)
- e) Digital Transport Forum (DTF)
- f) SWVL Kenya

V. Education Sector

- a) Kenya Secondary School Heads Association (KESSHA)
- b) Kenya Primary Schools Heads Association (KEPSHA)
- c) Kenya Union of Post Primary Education Teachers (KUPPET)
- d) Kenya National Union of Teachers (KNUT)

- e) Universities Academic Staff Union (UASU)
- f) National Parents Association (NPA)
- g) Kenya Private Schools Association (KPSA)

From the submissions received and presentations made before the Committee, the following areas of public concern were identified -

- i) Social-Economic protection of vulnerable groups including persons living with disability, persons employed in the informal sector, persons living in informal settlements, street families
- ii) Violation of human rights
- iii) Gender based violence
- iv) Protection of Employers and Employees
- v) Engagement of learners during the closure of all learning institutions
- vi) Operations by the Judiciary

The following section provides a summary of the submissions presented before the Committee by the various stakeholders.

LABOUR AND SOCIAL PROTECTION SECTOR

1. MINISTRY OF LABOUR AND SOCIAL PROTECTION

On 20th April, 2020, the Committee held a virtual meeting with the Cabinet Secretary of Labour and Social Protection, Mr. Simon Chelugui, EGH, the Principal Secretary, State Department of Labour, Mr. Peter Tum, OGW and the Principal Secretary, State Department of Social Protection, Mr. Nelson Marwa, CBS. The Cabinet Secretary informed the Committee as follows-

a) Assistance to Vulnerable Persons

The Cabinet Secretary informed the Committee that the National Treasury had communicated to the Ministry on the release 10Billion in support of vulnerable persons, as directed by the President. The Ministry of Labour together with a multi-agency team consisting of the Ministry, NGAO and Ministry of Health, are developing a criteria and mapping out vulnerable persons in Nairobi, Mombasa, Kwale, Kilifi (counties that were under lock-down as at the date of the meeting) in order to be able distribute the said cash to ease the economic burden.

On the Inua Jamii Cash Transfer Programme, the Ministry had received Kshs.8,754,196,000 to benefit 1,094,238 Kenyans. As of 20th April, 2020, older persons have begun to be paid through Co-operative bank, Postbank, KCB and Equity banks. A total of Kshs.8,000 will be paid per beneficiary covering January to April, 2020. 350,000 Kenyans who are eligible to be paid under this program have not been captured since the register being used is about 3/4 years old and needs to be updated. 293,967 beneficiaries enrolled under orphans and vulnerable children will receive Kshs.2,351,828,000 while 766,254 beneficiaries enrolled under older persons will receive Kshs.6,130,000,000 and 34,000 enrolled under persons with severe disability Kshs.272,148,000 would benefit.

The Street Families Rehabilitation Trust Fund was also operational, and institutions spread in 14 counties (Nairobi, Mombasa, Kilifi, Machakos, Nyeri, Kakamega, Kajiado, Kiambu, Murang'a, Nakuru, Kisumu, Trans Nzoia) were ready to accommodate these families. A total of 34Million has been provided to support these institutions cater for food, basic skills, medical care and psychosocial support.

The Cabinet Secretary acknowledged the fact that the Social Assistance Fund as established under the Social Assistance Act, 2013 was not operational but the Ministry was working on the relevant Regulations to operationalize the fund.

On the issue of the Employment Insurance Fund, the Cabinet Secretary stated that such a contributory fund, would be a good idea as a long-term solution in scenarios such as the current pandemic.

b) Measures to protect Employees from Retrenchment and Job Losses

The Cabinet Secretary informed the Committee that the ministry had consulted key stakeholders with an aim of coming up with strategies to minimize and avert job losses. The following are some measures that have been put in place -

- i) A toll-free line (080021168) and a dedicated email address (complaints@labour.go.ke) have been established to enhance reporting and resolution of employment and labour related complaints.

- ii) Employers have been urged to advise their workers to take annual leave, leave with half-pay or unpaid leave. The tourism, horticulture and floriculture sectors have already implemented this proposal.
- iii) To assist parties to safeguard employment contracts, promote their mutual interests and maintain harmonious relations even in the face of the great difficulties during and post the COVID-19 Pandemic.

The Ministry has proposed the **COVID-19 Pandemic Emergency Workplace Guidelines** as follows-

- i) Employers and Employees may jointly review the terms of the employment contract, in writing, to suit the prevailing circumstances of business.
- ii) Where parties choose to review the employment contract and employees are unionized, the trade union and shop stewards shall be informed and involved in the review and to find an amicable solution
- iii) Where employees are not unionized, the employer shall directly inform the employee of the need to review the employment contract and shall discuss the terms to be reviewed and the extent of review
- iv) If upon review of the contract parties mutually agree to have employees work on alternate days, half pay for the normal period of work or to take unpaid leave for any duration of time, this shall not be construed to be a break in employment service of the employee.
- v) Work from home shall be deemed to be official place of employment for the duration mutually agreed.
- vi) Employer to give employees clear and specific points of reporting, attending to work and supervision for work away from the workplace during the COVID-19 pandemic
- vii) Where work is to be performed away from the usual workplace, the employer shall provide the employee with essential tools of work for performance of duties while away from place of work.
- viii) Quarantine period may be deemed to be unpaid leave or paid leave upon agreement of parties.
- ix) Provision of Personal Protective Equipment (PPE) to workers while they work at home.
- x) Terms of Mutual Agreement for Review of Employment Contract during the COVID-19 Pandemic shall be filed with the Labour Commissioner or

the local labour office. This agreement shall only last for the period of the pandemic.

- xi) If there is a disagreement between parties on any of the terms of the Agreement or the Agreement, either party may report a labour dispute to the Labour Commissioner or to the local labour office.
- xii) Other considerations that parties may take include:
 - a. Unions and employers may consider suspension of negotiations of CBAs for a specified period
 - b. Out-workers should also be facilitated by employers

A copy of the written submissions received from the Ministry of Labour and Social Protection is attached to this report as **Annex 2**.

2. MINISTRY OF FOREIGN AFFAIRS

On 13th May, 2020, the Committee held a virtual meeting with the Cabinet Secretary, Ministry of Foreign Affairs. The Cabinet Secretary informed the Committee that many Kenyan citizens around the world had been affected by the measures put in place by various countries in order to suppress the spread of COVID-19 such as the abrupt shutting down of the airspace, restriction of movement in various jurisdictions and quarantine. The economic down-turn had caused an economic strain to many.

a) Kenyans in the Diaspora and Kenyan Missions Abroad

The Ministry of Foreign Affairs had made efforts to gather as much information as possible about Kenyans in the diaspora. The information may however not be as accurate as it should be, since registration with missions abroad is voluntary and Kenyans abroad do not necessarily register with the relevant mission. The information therefore keeps on evolving and the information given during the meeting with the Committee was as at the date and time of the meeting.

193 Kenyans had been infected by the virus. 88 were active infections, 78 had recovered while 4 were still in the ICU, 3 in Italy and 1 in Sweden. 24 persons had succumbed to COVID 19. The deaths reported were from the United States, United Kingdom, Italy, France, Switzerland, Sweden, Saudi Arabia and South Africa.

The Ministry had had an enormous task in trying to assist Kenyans in the diaspora. Kenyans in the diaspora are all over the world while Kenya's diplomatic footprint is not present in all those countries. Kenyans also have different statuses in the various countries. Some Kenyans have acquired citizenship and can therefore acquire health and social security benefits from the relevant countries, others have valid work permits and can access medical care, others have short-term contracts such as the domestic workers in the middle east, some were on vacation as tourists and got stranded after the various measures while others had visas that had run out. The Kenyan Missions abroad tried to the best of their ability to try and assist every Kenyan who wanted to come back home on a case by case basis.

b) Policy Framework

To effectively deal with interventions, the Ministry has put in place a policy framework on interventions as follows-

Non-monetary interventions, such as extension of visas and work permits, facilitating continuous accommodation of students who had nowhere to go and negotiating for air-tickets. Interventions so far includes-

- i) Kenyan Missions in France, Japan, Australia, Spain, New Zealand and India had facilitated extension of visas for some Kenyan citizens;
- ii) The Mission in China had requested for amnesty for Kenyans with irregular status in China;
- iii) Kenyan Mission in France had facilitated 61 teacher trainees to be accommodated by universities in France for a month;
- iv) Kenyan Mission in Morocco and Czech Republic facilitated students to be accommodated by the universities;
- v) Kenyan Mission in Hungary facilitated 200 students with food and accommodation;
- vi) Facilitating those who want to come back home by looking for an airline and negotiating for air-ticket prices. The Kenyans then pay for the subsidized tickets. Through this intervention, the following have been brought back home-
 - a) On 27th March, 2020, 70 Kenyans from South Sudan;

- b) On 7th April, 2020, 21 Kenyans from UAE(Dubai) aboard an Emirates flight;
- c) On 1st May, 2020, 18 Kenyans from Egypt aboard Air Cairo;
- d) On 4th May, 2020, 21 Kenyans from Pakistan aboard a Pakistan International Airline;
- e) On 4th May, 2020, 55 Kenyans aboard Kenya Airways;
- f) On 7th May, 2020, 233 from India, aboard Kenya Airways. This was the most challenging exercise as most of the persons were unwell and were scattered in Delhi, Mumbai, Bangalore, Ahmedabad, and Hyderabad. As India was on total lockdown, the Indian government allowed charter of local airlines to move the Kenyans to Mumbai in order to board the Kenya Airways flight;
- g) On 8th May, 2020, 200 Kenyans from UAE; and
- h) On 10th May, 2020 165 from China.

As at the date of the meeting with the Committee, the Ministry had facilitated 744 Kenyans to come back home. The government of Kenya will only carry out evacuations and foot the bills where Kenyan citizens are in countries where there is a complete break-down of law and order. However, the Ministry continues to receive requests from Kenyans who want to come back home and continues to look for means and ways of helping them to return home.

The Ministry had also put in place monetary interventions, such as stipend that was expended to students in Wuhan, China to the tune of Kshs.9.8 million.

c) Ministry's Preparedness

The Ministry constituted a Standing Committee on Emergency Response, chaired by Hon. Ababu Namwamba, EGH, CAS, Ministry of Foreign Affairs. The Committee's mandate includes dealing with issues pertaining to the diplomatic core in Kenya and issues pertaining to the diaspora.

A Special Purpose Committee has been established between the Ministry of Labour and the Ministry of Foreign Affairs to put in place pro-active measures just in case need arises for the approximately 100,000 Kenyans working as domestic workers in the Middle East.

Kenya sits on the Bureau of the Assembly of Head of States of the AU. The Bureau has approved AU's COVID 19 Strategy and established a COVID 19 Mitigation Fund. Kenya has contributed 2Million US Dollars to the Fund and 1Million US Dollars to Africa CDC for capacity building.

African Women ministers of foreign affairs are looking at an engendered response to COVID 19.

Former ministers of Finance in the AU region have been engaged as advisers to lead in negotiations with IMF and donors regarding Africa's debt relief, moratorium, and re-scheduling of loans.

d) Plight of Truck Drivers

The Ministers of Health, East Africa Community and Trade of the various East Africa Community countries produced a protocol for safe passage of commercial and humanitarian cargo across the borders. Unfortunately, this has not worked as effectively but continues to be tweaked to increase efficiency. On 12th May, 2020, the presidents of the East Africa Community met and directed that focal points for the formulation of testing and certification of truck drivers be produced and availed within two weeks from the date of the meeting. It is hoped that this will unlock the impasse.

e) Refugee Camps

As at 31st March, 2020, Kenya had 494,585 registered refugees. 200,000 based at the Dadaab Camp, 196,000 at Kakuma Camp and 81,024 in urban areas. The Ministry had engaged the UNHCR to find out measures that had been taken to secure refugee camps. Preventive measures such as washing hands, keeping social distance and obeying curfews had been implemented in the Camps. Restrictions had also been imposed in and out of the camps save for humanitarian support.

f) Resource Mobilization

Kenya had received support from Jack Ma's Foundation in terms of testing equipment, Africa CDC, Brazil 50,000 USD through the World Food Program,

Bilateral support from Denmark, other European countries, Japan, South Korea, United States, Egypt, Italy, India has lifted bans on medicine and Russia had contributed to the fight against locusts.

g) Communication

The Ministry has set-up a foreign dispatch unit that works 24 hours and a dedicated e-mail address in case of any queries or clarifications.

Following concerns raised by the Committee, the Cabinet Secretary stated-

- i) The Kenya-Tanzania border was a concern especially due to the risk of importation of infections. The National Response Teams are looking into the matter to ensure there is no cross -infection. Testing of truck drivers at the Namanga Border continues to be undertaken. Surveillance has been boosted at all border posts.
- ii) On the issue of an aircraft carrying humanitarian supplies that had been shot down in Somalia, killing two Kenyan citizens, the Ministry had issued a statement on the matter and investigations are on-going. The Ministry is keeping a tab on the matter and a Kenyan team is involved in the investigations.
- iii) On the safety of staff working in the Missions abroad, the Ministry confirmed that all staff were safe and activities at the various ministries had been downscaled and most staff were working from home. Chat groups had been created by the various missions to reach out to as many Kenyans as possible in their respective jurisdictions.
- iv) In conclusion, the Cabinet Secretary lauded the ambassadors in the various missions abroad and all the staff of the Ministry of Foreign Affairs for the exceptional work they were doing under difficult circumstances.

A copy of the written submissions received from the Ministry of Foreign Affairs is attached to this report as **Annex 3**.

3. FEDERATION OF KENYA EMPLOYERS

On 22nd April, 2020, the Committee held a virtual meeting with the Federation of Kenya Employers —

The Chief Executive Officer to the Federation of Kenya Employers informed the Committee that it has a membership of 1900 enterprises, representing about 2.3 Million employees. She further stated that most members of the Federation were in distress due to effects of the pandemic. Income levels had dropped drastically. She applauded the Cabinet Secretary, Labour, for the social dialogue that has been on-going since declaration of the pandemic. Employers have put in place measures in line with government directives and have also tried to ensure that the employees are not exposed to the virus on their way to work and while at work. Most employees have opted to give their employees unpaid leave, however unpaid leave only affects basic pay, but medical and other fringe benefits still must be catered for by the employer. This may not be tenable in the long run. The extent of insurance coverage on the Covid-19 disease and related illnesses should be made transparent.

The Federation has engaged the government to see what kind of interventions could be extended to employers, including rebates to cushion the wage bill, such as wage relief, to keep employees and tax relief. The government informed the Federation that putting in place the Wage Relief Fund would be a challenge especially in terms of identifying the beneficiaries. Companies have also been making contributions on their own volition towards the COVID Relief Fund, however, the government needs to exempt these contributions from tax. A clear criterion also needs to be identified on what essential and critical services entail as some services complement the essential services. Holistic interventions need to be identified to protect enterprises for purposes of post COVID 19 operations.

Regarding the Pandemic Response and Management Bill (Senate Bills No. 6 of 2020), the Federation submitted that the Bill was one-sided and favoured the employee, without taking into consideration the circumstances under which the employer was operating during a pandemic. As such the Bill was unrealistic and implementation would be a challenge. Further, the Bill was too prescriptive and needed to cover other disasters as well. The Federation was also of the view that there was need to include private sector in the membership of the National and

County Pandemic Response Committees. The Committee requested the Federation to submit written proposals, giving alternatives that would work to clauses of the Bill which the Federation felt were unrealistic and oppressive to the employer.

A copy of the written submissions received from the Federation of Kenya Employers is attached to this Report as **Annex 4**.

TRANSPORT SECTOR

1. MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

On 29th April, 2020, the Committee held a virtual meeting with the Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works. The Cabinet Secretary informed the Committee as follows-

The government had identified freight transportation and distribution of food items as an essential service. This was the reason why the SGR cargo and air transport cargo were still operational.

Most of the investors and employees in the transport industry fall under the Micro, Small and Medium sized enterprise and had thus benefited from the initiatives so far put in place by the government to cushion businesses from the impact of COVID 19, such as reduction of VAT and temporary suspension of listing with the Credit Reference Bureaus (CRB) of any person or entity whose loan falls overdue or is in arrears, effective 1st April, 2020. County governments have also been requested to waive parking fees levied on PSV operators. 1400 liters of sanitizer had also been given to the Matatu Owners Association for distribution.

Regarding the Likoni Ferry Crossing, the Kenya Ferry Services can operate four ferries at a time, i.e MV. Likoni, MV. Jambo, MV. Kilindini and MV. Kwale. MV. Safari had just been acquired and was yet to start operating as at the date of the meeting MV. Nyayo and MV. Harambee had broken down. The crowds waiting to board the ferries had initially been a challenge when social distancing was

introduced, however with working from home, the crowds have significantly reduced.

Some of the long-term measures that have been put in place as an alternative to use of the Likoni crossing include completion of the Dongo Kundu bypass, construction of the Mombasa Gate Bridge to be concluded by 2027 and development of a cable car facility, where an agreement has already been signed.

The Cabinet Secretary acknowledged that NTSA was not within the Ministry's docket but informed the Committee that the routine physical inspection of vehicles had been suspended as it was not an essential service. The transport sector could also not be listed as an essential service as it accounts for 90% of transportation and this would beat the essence of the dawn to dusk curfew.

Following interventions by the Committee, the Cabinet Secretary informed the Committee that-

- (a) The Ministry in collaboration with the Ministry of Health had carried out sensitization at various bus-stops in relation to various aspects of COVID19. Plans for a cashless system of payment for the public transport was underway but needed to be fast-tracked. NTSA was working on specifications to safeguard all parties.
- (b) NTSA was working on Regulations to regulate the digital hailing taxis
- (c) The passage of heavy commercial vehicles across counties may face challenges from time to time but there is a command center that deals with emerging issues and therefore challenges are resolved when they arise.
- (d) Kenya Railways has put in place 40 new coaches to complement matatus and sanitizer tunnels will be set-up at each railway station
- (e) The long distant drivers facing challenges at border-posts is an issue that has faced numerous challenges and has been escalated for consideration by the East Africa Heads of State. The escort by police and relay-driving at the borders poses logistical and security challenges.

A copy of the written submissions received from the Ministry is attached to this Report as **Annex 5**.

2. NATIONAL TRANSPORT AND SAFETY AUTHORITY (NTSA)

On 30th April, 2020, the Director-General, NTSA informed the Committee that services at NTSA were either available, restricted, or suspended. The available services included the online services for registration of motor-vehicles and renewal of driving licenses. The restricted services included collection of number-plates and E-stickers while suspended services included collection of logbooks, routine inspections and learner driving tests.

On intervention raised by the Committee, the Director-General informed the Committee that the digital platform operators had been informed of the challenges experienced with provision of certain services. The down-time experienced on the TIMS system had also improved.

A copy of the written submissions received from the Authority is attached to this Report as **Annex 6**.

3. STAKEHOLDERS IN THE TRANSPORT SECTOR

On 22nd April, 2020, the Committee held a virtual meeting with various stakeholders from the Transport Industry —

a) Digital Transport Forum

The Forum informed the meeting that digital transporters had been affected greatly by the government directives since business had really gone down and hence loss of revenue. Most of these transporters of their had taken loans from microfinance institutions which are not regulated by the Central Bank of Kenya. As such, most of their vehicles have been auctioned by the credit institutions. The Forum however acknowledged support from the local digital apps such as Little Cab which had slashed their commissions to 0% while Uber and Bolt are still running at the 25% rate.

The transporters made an appeal to the government to support the drivers through provision of masks, sanitizers, and detergents in order to fully comply with the government directives as their income has greatly been affected. The transporters further informed the meeting that they were also facing challenges

with the inspection of vehicles since the National Transport and Safety Association was not working. Uber and Bolt were locking out vehicles from their platform because of lack of compliance with inspection and license requirements.

The transporters would also like to be recognized as providing essential services, as with the curfew in place, they are harassed by police officers after dropping off essential workers at their work places or transporting citizens who may have medical emergencies during the curfew period.

b) Transport Workers Union

The Union stated that there was an urgent need to fully adopt the cashless system in the transport industry.

c) Kenya Transporters Association

The Association informed the meeting that its members had supported the government in various initiatives by giving out trucks to transport food, giving masks and sanitizers, However the members faced a number of challenges, especially in the current situation where there is restriction of movement.

One of the major challenges facing members of the association is corrupt police officers who demand bribes at the various roadblocks. The law enforcement agencies are not on essential and non-essential goods. The testing of truck drivers and their assistants needs to be done more efficiently.

The Kenya Revenue Authority was slow with clearance at the Port and one must wait for two days for regional trackers. The tracking devices are of low quality and sometimes need to be replaced before one reaches their destination. KeNHA had a lot of bureaucracy at the weighbridges especially when it comes to the number of loaders assisting with the weight imbalances. There needs to be coordination among the various agencies in enforcement especially KRA, NTSA, the Police and judiciary.

At the borders, the transporters faced challenges at the Malaba Border including traffic and delays occasioned by testing for COVID 19 and a possible lack of human resource capacity and lack of social distancing at immigration offices.

Further, delays on convoys being escorted by Rwandan authorities and the quarantine of an estimated 50 Kenyan drivers in Rwanda.

d) Matatu Owners Association

The Chairman of the Matatu Owners Association informed the meeting that the sector faced a myriad of challenges, among them the lack of recognition of matatus as an essential service, yet many essential workers rely on public transport. Most matatus have also been parked since the directive to have the carrying capacity of each matatu reduced by 40% means that the operational charges are more than the income.

The chairman made an appeal to the government to enforce the cashless fare system as Safaricom had created the 'Lipa Fare' platform. This would reduce the need to keep sanitizing the cash and reduce the spread of the virus. The Chairman also made an appeal to county governments to waive fees for seasonal tickets as most matatus are making losses. The matatu industry also needed a lot of support to comply with the Ministry of Health guidelines.

e) SWVL Kenya

SWVL Kenya informed the meeting that they had reduced their operational charges for riders and drivers within Nairobi. In addition, they were offering free rides to medics and workers in essential services. They were also providing masks and sanitizers to drivers and riders. Their appeal to the government was to consider the gradual opening of businesses.

f) East Africa Tour Guides and Drivers Association

The Association stated that there were no health facilities with capability to handle any outbreak in tourist establishments. Only 5 % of the establishments have resident medical staff. There is also need to waive fees and penalties in the tourism industry and in the long-term establish an employee stabilization fund for the tourism sector to cushion employees against retrenchment.

g) Tour Operators Society of Kenya

Tour Operators Society of Kenya in their oral and written submissions proposed the need to have a waiver of the mandatory annual fee for all tour operations and hotel businesses since this sector has been adversely affected by COVID 19, especially hotels which are closed. An appropriate refund policy should be imposed upon suppliers such as hotels and airlines who refuse to refund tour operators due to cancellations. The park fees should also be lowered for purposes of targeting guests post COVID 19.

Copies of the written submissions received from the various stakeholders in the transport sector are attached to this Report as **Annex 7**.

LAW, PUBLIC ORDER AND HUMAN RIGHTS SECTOR

1. MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

The Committee met the Ministry on 30th April, 2020 and 11th May, 2020.

On 30th April, 2020, the Chief Administrative Assistant, Mr. Dado, informed the Committee that Cabinet Secretary was engaged in other official duties but the Cabinet Secretary's signed response to the issues raised by the Committee. He informed the Committee as follows-

- i) After gazettelement of the dawn to dusk curfew, the National Police Service was mandated to ensure enforcement of the curfew. The police have been enforcing the various directives and, as at that date, had arrested 1,254 people found to have been flouting the rules. 1,198 of these are civilians, 38 police officers, 10 KDF officers, 4 prison warders, NIS officers, 4 NGAO officers and 3 judicial officers. These arrests had been made across 38 counties. The following measures have been taken to ensure the National Police Service respects human rights and dignity as they enforce the various measures put in place by the government.
- ii) Presentation of suspects within 24 hours from time of arrest- station commanders are under instructions to present suspects before court within

24 hours. The investigating officers, office of the director of public prosecution and the courts collaborate in the disposal of serious crime cases.

- iii) Traffic and petty offenders are released on cash bail or police free bond to appear before court on a later date.
- iv) Station commanders are required to maintain their respective police stations in hygienic condition. Guidelines for the prevention of Covid 19 are being observed.
- v) Any person with a valid reason to be out during curfew hours is allowed safe passage. Regional commanders are issuing letters of authority to those who cross to counties under restriction of movement
- vi) All police officers are under instructions to exercise restraint in the use of force during. Curfew violators are taken into custody to be presented before court the following day.
- vii) Essential workers have been advised to wear their official uniform, carry identification documents, or use official means of transport during curfew hours for ease of identification.

The Committee did not raise any supplementary questions and resolved to summon the Cabinet Secretary to appear before the Committee for failing to honour three consecutive invitations by the Committee.

Subsequently, on 11th May, 2020 the Cabinet Secretary honoured the summons issued by the Committee. Before commencing the meeting, the Cabinet Secretary informed the Committee that he had not honoured the Committee, invitations to several meetings because of exigencies of work. He then informed the Committee as follows-

- i) The police officers had been sensitized on the prevention and management of COVID19 through training of commanders who are to cascade the information to their juniors.

- ii) There had been enhanced testing and isolation of suspects at the police stations. Water, sanitizers, and masks had been provided at the stations. The gender desks at the police stations were also operational.
- iii) Through support from private entities such as the Kenya Association of Manufacturers, warm jackets and basic amenities had been provided to police officers manning the roadblocks. The NYS has also provided 1,000,000 masks.
- iv) The NCAJ has worked to decongest the prisons and every week, there are prisoners who complete their jail term. All prisons have been closed to outsiders and a rigid system of testing has been put in place for prison warders and other prison workers. As at the date of the meeting 219 prison workers had been tested. Isolation facilities had been set up within the prison service to accommodate 500 inmates and was being scaled up to accommodate 1000 inmates.
- v) The Ministry of Health and the Ministry of Interior agreed that remandees would not be mixed and as such they have been kept aside. After testing, 2 remandees were found to be COVID-19 positive and were isolated. 47,000 inmates are fine and daily reviews are done. All medical prison staff who were on leave, were recalled.
- vi) In terms of social assistance, the government decided that those hardest hit by the pandemic, who are the urban poor in informal settlements and were not in other government social assistance schemes, such as households led by children, would benefit first. *Nyumba Kumi*, Community health workers, Assistant chiefs and the Red Cross did a census and a strict criterion was set. The mobile numbers were taken and Ks. 4,000 is disbursed every month. All the needy have not been reached but with more budgetary support the numbers would be increased.
- vii) 26,000 youth who lost their jobs due to the pandemic have been engaged in the *Kazi Mtaani* project which involves doing menial work. The criteria used to identify the youth was that none should be from a household that was benefitting from other government initiatives.

On intervention by the Committee, the Cabinet Secretary responded to the various concerns as follows-

- i) On the issue of police brutality, the police have standing orders and there are disciplinary measures. Where the attention of the Service is drawn to indiscipline, action will be taken. It would however be important to note that there was citizen brutality against the police.
- ii) On the matter of evictions, people who had illegally occupied public land had been issued with eviction notices. However, with the setting-in of COVID-19, the President had directed that all evictions cease.
- iii) The level of alertness at the borders had been raised. At the Somalia and Tanzania borders, an increased number of security and surveillance for testing had been deployed. There's aerial surveillance to ensure those persons using undesignated routes are apprehended. A second level of screening has been placed 10km into the country from these borders.
- iv) The level of curfew compliance is 90% however, in Nairobi, those who violate the curfew are confined at the Kasarani stadium
- v) Citizens are encouraged to report incidences of police violations. There is an Internal Affairs Unit at IPOA that deals with such matters.
- vi) The issue of mental health has been considered by the government and given the necessary attention. Plans are underway to have in place two national mental referral health facilities at Gigiri and Mathare.

Copies of the written submissions received from the Ministry are attached to this Report as **Annex 8**.

2. NATIONAL COUNCIL FOR THE ADMINISTRATION OF JUSTICE

On 23rd April, 2020, the Committee held a virtual meeting with the National Council for the Administration of Justice and the Law Society of Kenya. The Secretary to the National Council for the Administration of Justice informed the meeting as follows-

a) Measures put in place to combat the pandemic

The Chief Justice as the chairperson of the National Council for the Administration of Justice had on various occasions since the declaration of the pandemic and its evolution, announced various measures to comply with government directives. This include the following-

- i) downscaling on the operations of the Judiciary and other institutions within the Justice sector.
- ii) prisoners and remandees would not be presented to court. There has also been an effort to decongest prisons by reviewing bail terms and ensuring no new persons get into prison by ensuring that minor offences would be dealt with at the police stations in line with guidelines issued by the Inspector-General of Police, as at 20th April, 2020, over 5000 remandees and prisoners had been released.
- iii) Except for serious offences which would be presented to Court in the usual way, all hearings, appeals, mentions and executions would be suspended

b) Leveraging on ICT in Court Operations

The Chief Registrar further informed the meeting that Courts remain open to undertake emergency matters and take plea. Teleconferencing has been used to connect courts, prisons, prosecutors, and advocates who have urgent matters. As at 17th April, 2020 44 court sessions in 23 court stations had been facilitated via skype or zoom. 116 laptops had been distributed to Judges and Magistrates and 73 laptops had been issued to secretaries to facilitate typing of rulings, judgments, and proceedings. The Commercial division had taken a lead in e-filing, and as at 15th April, 2020, 1,394 matters had been filed electronically. Cumulatively, as at 20th April, 2020 1,157 rulings and judgments had been delivered electronically. On 17th April, 2020, Practice Directions dealing with electronic filing, hearing and delivery of rulings and judgments were published.

c) Administrative Matters

A budgetary reallocation of 50Million was approved to support COVID 19 related expenses such as fumigation and procurement of gloves, sanitizers and masks for all courts and tribunals.

In terms of measuring performance for judges working from home, the Chief Registrar stated that the Judiciary had in place an electronic daily return system for accountability. As at the date of the meeting, the Court of Appeal had delivered 57 judgments electronically, the High Court had delivered 452 and 700 were pending while the Environment and Lands Court had delivered 37 and 300 were pending. The major challenge in the electronic delivery of these judgments has been issuance of e-mail addresses by the parties.

The Committee requested the Chief Registrar to submit proposals to be included in the Pandemic Response and Management Bill, Senate Bills No. 6 of 2020 that would ensure the seamless operations of the judiciary during exceptional times caused by a pandemic,

A copy of the written submissions received from the NCAJ is attached to this Report as **Annex 9**.

3. THE LAW SOCIETY OF KENYA

The Law Society of Kenya requested an upscale of court operations and regular communication between the Judiciary and the Law Society, as the Society would be best placed to give feedback about court operations, especially in the up-country stations. The Society was concerned that some tribunals such as the NEMA Tribunal were completely shut down therefore denying access to justice.

The Chief Registrar stated that the Judiciary had requested the Ministry of Health to inspect all the courts to determine the levels of upscaling of court operations. The process was to be completed by 24th April, 2020. LSK also informed that to improve efficiency especially at the Milimani Courts a constantly manned help line has been put in place and Cause Lists would indicate timings to avoid wastage of time by parties.

4. CIVIL SOCIETY ORGANIZATIONS (CSOs)

On 23rd April, 2020, the Committee held a virtual meeting with various civil society organizations working in the human rights field, who submitted as follows: -

Crime si Poa informed the committee that the biggest challenge in informal settlements was rent payment. Appeal be made to slum landlords to give a 2- or 3-months' rent waiver. The household are living in precarious areas and therefore susceptible to disease outbreak. Relying on NGOs to support the informal sector is not sustainable. The youth should be included in the group of vulnerable persons and need to be supported. There needs to be synergy between various agencies and players.

KELIN raised the issue of the situation at mandatory quarantine centres. Lack of information, poor hygiene, and costs for extended quarantine in government institutions. Curfew violators are being punished by being sent to mandatory quarantine centres. This will lead to detesting of voluntary testing for fear of being sent to the quarantine centres. Essentially also, this move has heightened corruption since the citizens will prefer to bribe the police than be sent to quarantine centres. Police brutality has also been on the increase. Request for information from various government offices has also not been forthcoming despite bringing this matter to the attention of the Commission on Administrative Justice.

Amnesty International also informed the Committee that access to information from various government offices was a challenge. Another grave issue has been the issue of police brutality using lethal force which has at the date of the meeting, led to 16 fatalities.

Copies of the written submissions received from the civil society organizations are attached to this Report as ***Annex 10***.

EDUCATION SECTOR

1. MINISTRY OF EDUCATION

The Ministry of Education submitted written responses to the information sought by the Committee. As at the time of submitting this Report, the Committee was yet to hold a meeting with the Cabinet Secretary for Education.

In the written submissions, the Cabinet Secretary informed the Committee as follows: -

- i) Regarding measures to enable learners in educational institutions to continue with their studies during the pandemic, the Ministry, through the Kenya Institute for Curriculum Development (KICD), was delivering curriculum through television, radio (in English, Kiswahili and selected local languages), Kenya Education Cloud, YouTube, and by making digital content available to various multi-media bookshops;
- ii) The Ministry was also working with stakeholders in the education sector to ensure continuity in the curriculum delivery in collaboration with other government agencies.
- iii) Regarding the impact of COVID-19 on the learning calendar, the Cabinet Secretary informed the Committee that the second term had been rescheduled by one-month effective 4th May, 2020, as the Ministry continued to monitor the pandemic situation. The calendar for administration of national examinations however remained unchanged as at 27th April, 2020.
- iv) On the number of learning institutions designated as quarantine facilities, the Ministry had identified 436 institutions to be used as isolation centres/ quarantine facilities, with a bed capacity of 138,220 across the country. This had been done in liaison with the Kenya Medical Practitioners and Dentists Council, which was the body mandated to assess their status and any potential exposure.

A copy of the written submissions received from the Ministry is attached to this Report as ***Annex 11***.

2. EDUCATION STAKEHOLDERS

On 8th May, 2020, the Committee held a virtual meeting with various stakeholders in the education sector. The stakeholders presented as follows-

a) The Kenya Secondary Schools Head Association (KESSHA)

The Chairperson informed the Committee that, as at the declaration of COVID 19 as a pandemic and subsequent closure of schools, the schools had about 4

weeks to complete the first term. The closure was abrupt and as such no guidelines were issued on how the schools or the parents would engage the students while at home. Consequently schools have handled the matter differently and some have engaged students remotely however, access to digital learning is not possible for far flung areas and low-income households.

Syllabus coverage had been affected but the teachers will have to start where they stopped before the interruption, when schools re-open. If the schools are closed beyond June, 2020, 11 weeks will have been lost and examination dates will have to be adjusted. The government may have to consider partial opening of schools for exit and transition purposes or change the academic calendar to start in September, 2020 and the students would have to remain in their current classes.

The public schools had found it challenging to pay non-teaching staff without government capitation and parents paying fees. Concern had also been raised about schools that were being used as quarantine centers. Some of the persons quarantined and refused to pay as directed by the government. Further, there was concern that once schools are re-opened, there may be stigmatization from students from other schools. The safety of children and teachers is paramount and as such the Ministry of Education needs to have a clear post COVID-19 roadmap on essential actions that need to be undertaken in order to have a safe return to school.

b) Kenya Primary School Heads Association (KEPSHA)

The Chairperson informed the Committee that due to the abrupt closure of schools, pupils did not carry sufficient work to do at home but it was a relief to the Association because the interaction of the pupils with public transport and the numbers generally would have posed a challenge in trying to suppress the spread of covid 19. Some schools continue to interact with the pupils while at home but the parents are not trained to handle the pupils at home. The Kenya Institute of Curriculum Development programmes that air from time to time are just to keep the pupils busy but not a continuation of the syllabus.

c) Kenya Private Schools Association (KPSA)

The Chairperson informed the Committee that the Association deals with private schools under the 8-4-4 curricula, with a mix of profit, non-profit and faith-based schools. It has branches in all the 47 counties, with membership of 10,400 primary schools and 1,627 secondary schools. The schools employ a total of 155,000 teachers, 133,000 non-teaching staff. The primary schools have an enrollment of 2.14 Million learners while the secondary schools have 271,618 students.

Not all schools are offering on-line learning. International schools and schools in the city have mounted the on-line classes. Remote learning and teaching need to be enhanced. The Kenya Institute of Curriculum Development needs to expedite the approval of the digital content syllabus. The government needs to provide affordable internet and provide devices for children with disability to be able to engage in remote learning. Technical subjects and CBC students will need to catch up with the practical content of the respective subjects.

The Association proposed that the academic calendar be reorganized with the involvement of all stakeholders without compromising the quality of education. Learning hours may need to be revised to allow faster syllabus coverage.

Cash flows had evaporated since the closure of schools and the uncertainty of re-opening of schools makes it difficult to plan. The government should consider suspension of statutory payments.

The lack of liquidity has impeded the ability of schools to meet critical monthly commitments. The Association appeals to the government to provide grants to private schools to enable them meet human resource obligations. Current training initiatives should include all TSC teachers until such time when the private schools will be able to get back on their feet financially.

Regarding back-to-school protocols, information and facts about COVID-19 will need to be disseminated to learners to diminish learners' fears and anxieties around the disease when schools re-open. Capacity building of all staff will need to be undertaken to manage and respond to any case of COVID-19 recurrence.

The Association also noted that the Basic Education laws do not anticipate the current situation and there was therefore need to amend the laws to allow for tuition at home, on-line learning and strengthen parental engagement in education.

d) National Parents Association (NPA)

The Chairperson informed the Committee that the Association welcomed the move by the government to close schools. The on-line learning programmes being conducted by some schools posed a challenge to some parents due to low computer literacy and the affordability of the internet and gadgets associated. The Association proposed that the government should work with internet providers for accessibility to remote areas and reduce taxes on IT gadgets. E-learning should concentrate on revision and not syllabus coverage.

The Association was of the view that schools should not open until the curve of infection was flattened. At the opportune time, schools should be re-opened in a phased manner, taking into consideration the Ministry of health guidelines. All persons accessing the schools should provide certification showing their COVID-19 status.

e) Kenya Union of Post Primary Education Teachers (KUPPET)

The Chairperson informed the Committee that, in addition to the concerns that had already been raised by other stakeholders, the main concern caused by closure of schools was the sustainability of jobs. The curriculum was also adversely affected. On-learn learning is however not a substitute for learning and the KICD lessons aired on television were too short and do not cater for practical lessons. Learners with disability such as deaf and blind learners are also not accommodated in the lessons. The rural children have no access to such lessons. The KICD need to develop a virtual curriculum. Cyber bullying has also increased as an increased number of learners are accessing the internet. The safety of teachers and learners was paramount.

f) Kenya National Union of Teachers (KNUT)

The chairperson informed the Committee that the infrastructure to support virtual learning was inadequate. In terms of post-COVID-19, the safety of the children was paramount. The 2020 candidates should be allowed to prepare for exams and preference should be given to them when its an opportune time to re-open schools. Schools should be inspected by health officials and declared COVID free be re-opening schools.

Screening of teachers, students and non-teaching staff would be import. UNICEF have a checklist of how to preserve the health of teachers and learners, UNESCO have a COVID-19 Education Response Manual and each school should have a team to implement the checklist and oversight day to day running of school operations.

The School management should take staff through the Regulations to contain COVID-19. Classrooms should be re-configured for social distancing and P.E lessons and assemblies should be discouraged. School management should also stagger break-times. PPEs should be provided to schools and counselling provided at all schools. The Ministry of Education should facilitate consultative meetings.

g) University Academic Staff Union (UASU)

The Chairperson informed the Committee that, in the higher education sector, some public universities were using digital platforms on a trial basis and it was therefore difficult to assess if learning is going on. The poor students and most pastoralist community students cannot access the lessons and practical exposure to courses such as engineering and medicine was impossible. Administering exams and assessing thesis exams on-line was a challenge. Some public universities such as the Dedan Kimathi University have held on-line graduation. ICT infrastructure needs to be strengthened and lecturers trained on e-learning for quality monitoring.

The government should fund universities to research on a probable vaccine for COVID-19 since research is a co-function of universities. As students are off campus, the 40% capitation from the government is not being received by

universities and as such staff at some universities such as the Egerton University are being paid half of their net salaries. Early marriages of the girl-child had also increased due to closure of the institutions.

Copies of the written submissions received from the education stakeholders are attached to this Report as ***Annex 12***.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

The COVID 19 pandemic situation is highly evolving. The following observations and recommendations by the Committee reflect the situation, and available information as at 18th May, 2020

The Committee observed that-

- a) The pandemic has adversely affected key sectors of the economy such as trade, tourism, agriculture, and manufacturing, leading to massive revenue losses and therefore consequent job losses
- b) The curfew and other restrictions imposed to control the spread of COVID-19 had affected persons living in informal settlements and those working in informal sectors, the government has rolled-out cash transfer assistance programs to enable the urban poor cater for their basic needs. The Street Families Rehabilitation Fund is also currently being used to support institutions in only fourteen counties yet there are street families in all counties.
- c) The Judiciary's up-scaling of services has been extremely slow. The Judiciary had not yet up scaled its services to keep the wheels of justice turning. The Ministry of Health was to complete an inspection of courts by 24th April, 2020 to determine the magnitude of up-scaling. The upscaling is however yet to be done as expected.
- d) Persons engaged in the public transportation industry had been experiencing challenges due to lack of renewal of various licenses, due suspension of service by the NTSA. Taxi operators on the digital platform had been locked out by some App operators for lack of necessary documentation. It is however noted that after the Committee brought this matter to the attention of NTSA during a meeting with the committee on 30th April, 2020, NTSA on the same day published a notice on their website extending the expiry of motor vehicle inspections from 16th March, 2020 to 30th May, 2020

- e) The transportation of goods across borders by truck drivers is a logistical nightmare. Truck drivers have to persevere with traffic jams of over 40kms at some border posts due to the testing procedures. The issue of relay-driving of the trucks at the various borders had also posed a security threat especially with regard to the goods being transported.
- f) Police brutality and use of excessive force while handling violators or alleged violators of the various regulations put in place to suppress COVID 19 is inhuman and unacceptable.
- g) Evictions being carried out during this COVID 19 season whether notices had been issued or not are inhuman and uncalled for. The Committee also notes that the President had directed that no evictions should be carried out during this pandemic period.
- h) Access to information is a right of every citizen under Article 35 of the Constitution. It is regrettable that some public institutions have ignored requests from non- governmental institutions pertaining to various issues related to COVID 19.
- i) There are Kenyan citizens in the diaspora who have been adversely affected by the effects of COVID 19 and would like to come back home. However, these citizens cannot afford to pay for their air-tickets back home and need to be assisted to get home as their continuous stay in the diaspora is unsustainable.
- j) The Ministry of Education had as at 8th May, 2020 not engaged with the stakeholders in the Education sector to assess the effects of COVID 19 and give guidelines on home-based interaction between the children, parents, and teachers. However, on 12th May, 2020 after the Committee had met with the education stakeholders and expressed its displeasure in the lack of social dialogue, the Cabinet Secretary, Ministry of Education launched the COVID 19 National Education Response Committee to among other functions, advise the Cabinet Secretary on the impact of COVID 19 on education. The Committee draws its membership from various stakeholders in the Education Industry and has made a call for submission of memoranda from the public on matters relating to their terms of reference, to be received on or before 22nd May, 2020.

- k) Learners from low –income households, pastoralist communities and far flanked regions do not have access to internet, electricity, relevant gadgets and the necessary infrastructure to facilitate remote learning and as such cannot fully participate in the various on-going remote programs.
- l) The programs currently being aired by the Kenya Institute of Curriculum Development do not incorporate suitable content for learners with disabilities, especially the blind and deaf. The practical subjects are also not covered, and the programs do not serve the main objective of the Competency Based Curriculum. The learning is therefore not on-going, and the syllabus is not being covered. Teachers will have to pick-up from where they left when schools re-open.
- m) Early marriages have increased due to the abrupt closure of learning institutions and uncertainty as to when the institutions will re-open.
- n) Incidents of gender-based violence have increased since the commencement of enforcement of measures to contain the spread of COVID 19.
- o) Approximately 350,000 persons especially the older persons eligible to benefit from the *Inua Jamii* Program were not benefiting from the program due to lack of prompt updating of the register.
- p) The mode of transmission of money to the older persons registered under the *Inua Jamii* program requires physical presence which may expose the older persons to infectious diseases due to their vulnerability, especially during this pandemic season.

Based on these observations, the Ad Hoc Committee on COVID-19 **recommends that-**

- a) The National Treasury sets up a multi-agency team to spearhead the establishment of a Wage Relief Fund in the financial year 2021/2022.
- b) The Ministry of Labour and Social Protection in liaison with the Federation of Kenya Employers and the Central Organization of Trade Unions should reach out to employers and employees to ensure that where revenue losses

have been realized, employers and employees may jointly review the terms of the employment contract, in writing, to suit the prevailing circumstances of business. Where parties choose to review the employment contract and employees are unionized, the trade union shall be informed and involved in the review to find an amicable solution. However, where employees are not unionized, the employer shall directly inform the employee of the need to review the employment contract and shall discuss the terms to be reviewed and the extent of review.

- c) The Ministry of Labour and Social Assistance should engage institution in the remaining 33 counties to ensure that street families through-out the country benefit from the Street Families Rehabilitation Fund
- d) the Judicial Service Commission immediately up-scales the judicial services in liaison with the Ministry of ICT to increase their use of ICT especially in terms of E-Filing and virtual Courts and report status of implementation to the Senate on or before 29th May, 2020;
- e) the Judicial Service Commission explores ways in which Alternative Dispute Resolution mechanisms can also be embraced virtually to decongest the courts
- f) the National Transport and Safety Authority should intervene to ensure that during the period of restriction of movement in and out of various counties, the matatus affected by the restrictions can ply alternative routes to avoid redundancy
- g) the National Transport Authority should extend the validity of manual licenses for an additional one year since the application for digital licenses requires physical appearance for purposes of biometrics, which is currently restricted due the measures put in place.
- h) the Independent Police Oversight Authority should move with speed to ensure police officers found to have used excessive force on citizens while enforcing various measures are prosecuted. The Authority should submit a status report to the Senate by 15th June, 2020, indicating the police officers who have been prosecuted and the actions taken against them.

- i) the Ministry of Foreign Affairs should set a criterion on eligibility of Kenyans in the diaspora who are in dire need of coming back home but cannot afford air-tickets, giving priority to students. The Ministry should then make a request for support from the various emergency funds that have been set-up to mitigate the effects of COVID 19, to ensure that those Kenyans are facilitated to come back home. The Ministry should submit a detailed report to the Senate by 19th June, 2020 indicating the criteria set to identify the Kenyans in the diaspora eligible for support and measures taken by the Ministry to mobilize resources to facilitate these Kenyans.
- j) the Ministry of Education should enhance digital literacy for teaching and learning regardless of COVID 19. The Kenya Institute of Curriculum Development should fast-track the development of the digital content syllabus.
- k) the Ministry of Education should fast-track the setting-up of a clear roadmap prior to re-opening of learning institutions.
- l) the Ministry of Labour and Social Protection immediately rolls out a plan to update its register and incorporate the over 350,000 eligible beneficiaries to the cash transfer *Inua Jamii* Program.
- m) the Ministry of Labour and Social Protection, in liaison with the Ministry of Interior and National Coordination carries out capacity building of older persons with an aim of remitting the funds via mobile platforms

LIST OF ANNEXES

- Annex 1:** Minutes of the 54th Sitting of the Ad Hoc Committee on the COVID-19 Situation
- Annex 2:** Presentation by the Cabinet Secretary for Labour and Social Welfare
- Annex 3:** Presentation by the Cabinet Secretary for Foreign Affairs
- Annex 4:** Presentation by the Federation of Kenya Employers
- Annex 5:** Presentation by the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works
- Annex 6:** Presentation by the National Transport and Safety Authority
- Annex 7:** Submissions by transport stakeholders
- Annex 8:** Presentation by the Ministry of Interior and Coordination of National Government
- Annex 9:** Submissions by the National Council for the Administration of Justice
- Annex 10:** Submissions by civil society organizations (CSOs)
- Annex 11:** Submission by the Ministry of Education
- Annex 12:** Submissions by Education stakeholders